



Sentencing Policy Study Committee

Minutes of Meeting Held on July 7, 2004

Member in Attendance

Rep. William Crawford, Indiana House of Representatives
Sen. Glenn Howard, Indiana Senate
Sheila Hudson, Allen Co. Community Corrections
Steve Johnson, Executive Director Indiana Prosecuting Attorney's Council
Larry Landis, Executive Director Indiana Public Defender Council
Hon. David Matsey, Starke Co. Circuit Court
Todd McCormack, Hendricks Co. Probation
Hon. Judith Proffitt, Hamilton Co. Circuit Court
Evelyn Ridley-Turner, Commissioner Indiana Department of Correction
Hon. Randall Shepard, Chief Justice Indiana Supreme Court
Robin Tew, Executive Director Indiana Criminal Justice Institute
Hon. Tanya Walton Pratt, Marion Co. Superior Court
Hon. James Williams, Union Co. Circuit Court

Minutes

Rep. William Crawford called the meeting to order at 9:05 a.m. Rep. Crawford explained that Sentencing Policy Study Committee Chair, Sen. David Long would be unable to attend the meeting and that he would be acting as chair. Rep. Crawford stated that the meeting would follow the agenda and then the Committee would separate into the assigned workgroups directly afterwards. Rep. Crawford then turned the meeting over to Committee member Robin Tew for a discussion of the Vera Institute. Ms. Tew stated that Vera had been contacted and had agreed to assist the Committee with its work. The meeting was then opened for comments from other Committee members. The Committee expressed the following:

- Vera would be very helpful by providing a national resource.
- The Committee needed to be specific with what we expect Vera to do.
- The experiences of other states, in addition to national perspectives, would be important to help Indiana avoid any potential pitfalls.

Ms. Tew concluded the Vera discussion by stating that she would convey these comments to Vera.

Rep. Crawford continued the meeting with a discussion of *Blakely v. Washington*. The Committee had hoped to have Professor Frank Bowman present on the case, but he was unable to attend due to testimony he was providing to Congress that day. The discussion proceeded with Committee members Larry Landis and Steve Johnson providing a synopsis of *Blakely*.

In *Blakely*, the U.S. Supreme Court (5-4 vote) invalidated a sentence from the state of Washington. In doing so, the Court ruled that any fact, other than the fact of a prior conviction, that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. The Court defined statutory maximum as the maximum sentence a judge may impose based solely on the facts reflected in the jury verdict or admitted by the defendant. Ralph Blakely, Jr. pleaded guilty to kidnapping. The facts admitted in his plea, standing alone, supported a maximum sentence of 53 months, but the judge imposed a 90 month sentence after finding that Blakely had acted with deliberate cruelty, a statutorily enumerated

ground for departing from the standard range under Washington's Sentencing Reform Act. In *Blakely*, the Supreme Court held that since the facts supporting Blakely's enhanced sentence were neither admitted by Blakely nor found beyond a reasonable doubt by a jury, the sentence violated his Sixth Amendment right to trial by jury.

During this discussion, Larry Landis stated that his interpretation was that, absent a jury determination, for a sentence to be enhanced, a defendant must either admit the facts used to enhance the sentence in a plea or waive his/her Sixth Amendment right. Steve Johnson stated that he thought the Indiana Supreme Court would have to ultimately answer the question of whether Indiana's sentencing statutes are unconstitutional. Steve Johnson also discussed some of the alternatives mentioned in Justice Breyer's dissent, including bi-furcated trials. Both Mr. Landis and Mr. Johnson agreed that the state was fortunate to have this Committee already at work.

Rep. Crawford, referencing the close 5 to 4 vote, stated that *Blakely* had presented an evolving issue. Judge Matsey expressed the feeling that something needed to be done soon with regard to *Blakely* and its impact on Indiana, stating that the current presumptive sentence is now probably the maximum sentence. The Committee briefly discussed possible answers to the *Blakely* issue, including higher presumptive sentences (and then mitigating down), charging aggravators as elements of an offense, or holding bi-furcated trials where there would be a separate sentencing proceeding. Rep. Crawford stated that the timing to address *Blakely* would be during the next legislative session. He also stated that this work was properly left to the Criminal Code Revision workgroup. Before moving on, Rep. Crawford expressed his opinion that he didn't think the legislature would be willing to raise the presumptive sentences.

The meeting continued with reports from the Chairs of the three workgroups. Judge Good discussed the Policy and System Development workgroup. Stating that the first meeting was primarily a philosophic discussion, Judge Good went through the minutes of the workgroup's meeting. The minutes were distributed to the Committee.

Steve Johnson discussed the work of the Criminal Code Revision workgroup. Mr. Johnson mentioned three statutory changes that were needed due to appellate court decisions, briefly discussed the ongoing review of D.O.C. population figures, and outlined an upcoming task of pulling certain offender packets in an attempt to determine exactly why offenders receive the sentences they get. Minutes from the meeting of the Criminal Code Revision workgroup were distributed to the Committee.

Todd McCormack discussed the work of the Transitional Services workgroup. Mr. McCormack spoke about the Vera Institute and their usefulness with this topic. A uniform risk assessment instrument was discussed along with the need to provide a continuum of services to offenders. Mr. McCormack stated that the workgroup hoped to refine its list of pressing issues at the workgroup meeting immediately following this Committee meeting.

Rep. Crawford concluded the meeting with a brief discussion of drug courts. Stating that he had missed the previous Committee meeting because he was in Milwaukee, WI, for a conference on drug courts, Rep. Crawford felt that Indiana was not keeping pace with the rest of the nation with respect to drug courts. Rep. Crawford stated that he would speak with the Chair of the Sentencing Policy Study Committee, Sen. David Long, to attempt to determine where the issue of drug courts fits into the overall work of the Committee.

Rep. Crawford adjourned the meeting and dismissed the Committee members into their respective workgroups.